

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

MEMPHIS CITY CARTAGE, LLC,

Plaintiff,

v.

MATSON LOGISTICS, INC., and AC
LOGISTICS, INC.,

Defendants.

C.A. No. _____

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1441 and 1446, Defendant Matson Logistics, Inc. (“Defendant” or “Matson”), by and through its undersigned counsel, hereby respectfully files and serves this Notice of Removal to remove this action from the Chancery Court of Shelby County, Tennessee for the Thirtieth Judicial District at Memphis, to this Court based upon the following:

NATURE OF THE ACTION

1. On or about September 29, 2023, Plaintiff Memphis City Cartage, LLC, (“Plaintiff” or “MCCL”) filed a complaint alleging sworn account and breach of contract (the “Complaint”) in the Chancery Court of Shelby County, Tennessee for the Thirtieth Judicial District at Memphis, against Defendant, and Co-Defendant AC Logistics, Inc. (“Co-Defendant”), which matter was styled *Memphis City Cartage, LLC, Plaintiff, v. Matson Logistics, Inc., and AC Logistics, Inc., Defendants*, Filing No. CH-23-1281-1 (the “State Court Action”). A true and correct copy of the Complaint in the State Court Action is attached hereto as Exhibit A and incorporated by reference herein.

THE NOTICE OF REMOVAL IS TIMELY

2. The Complaint was purportedly filed on September 29, 2023.
3. The Complaint was served upon Matson on November 27, 2023.
4. Matson has not yet answered the Complaint in the State Court Action.
5. This Notice of Removal is timely filed with this Court within thirty (30) days after receipt of the Complaint by Defendant on November 27, 2023. *See* 28 U.S.C. § 1446(b)(1).
6. Co-Defendant AC Logistics, Inc. consents to this removal in accordance with 28 U.S.C. § 1446(b)(2)(A)). A true and correct copy of the electronic mail correspondence dated December 6, 2023, confirming Co-Defendant's consent to removal, is attached hereto as **Exhibit B** and incorporated by reference herein.

BASIS OF REMOVAL

7. This Court has original jurisdiction over this matter pursuant to 28 U.S.C. § 1332.
8. As alleged in the Complaint, Plaintiff is a Tennessee limited liability company with its principal place of business located in Tennessee. *See* Compl. ¶ 1. According to the Tennessee Secretary of State Business Services Online website, Plaintiff is a limited liability company organized under the laws of the State of Indiana. A true and correct copy of the results from the Tennessee Secretary of State is attached hereto as **Exhibit C**. According to the Indiana Secretary of State Public Business Search, Plaintiff is an Indiana LLC with a sole manager by the name of Nammy Eskar with an address of 415 E. 31st Street, Anderson, Indiana. A true and correct copy of the results from the Indiana Secretary of State is attached hereto as **Exhibit D**.

9. Defendant Matson Logistics, Inc. is not domiciled in Tennessee or Indiana. Defendant Matson is a Hawaii corporation with its principal place of business in Walnut Creek, California.

10. Co-Defendant AC Logistics, Inc. is not domiciled in Tennessee or Indiana. Upon information and belief, Co-Defendant is a Pennsylvania corporation with its principal place of business in Norristown, Pennsylvania. *See Compl. ¶ 3.*

11. Upon information and belief, none of the members of Plaintiff are Hawaiian or Pennsylvania entities or individuals who are citizens of Hawaii, California, or Pennsylvania.

12. The amount in controversy exceeds \$75,000, exclusive of interest and costs. Specifically, Plaintiff seeks damages allegedly comprised of the following: (a) damages totaling \$79,903.37, (b) pre- and post-judgment interest, attorneys' fees, and costs, and (c) any and other further relief. *See Compl. ¶¶ 11, 14, and Wherefore Clause.*

13. Accordingly, Defendant Matson is entitled to remove the State Court Action pursuant to 28 U.S.C. § 1446, because diversity of citizenship exists and the amount in controversy exceeds \$75,000, exclusive of interest and costs, as required by 28 U.S.C. § 1332.

OTHER REMOVABILITY REQUIREMENTS

14. Promptly after the filing of this Notice of Removal, Defendant Matson will provide notice of the removal to Plaintiff and Co-Defendant through its attorney of record in the State Court Action and to the Clerk of the Court in the State Court Action, as required by 28 U.S.C. § 1446(d).

15. Defendant Matson reserves the right to amend or supplement this Notice of Removal.

16. Defendant Matson reserves all defenses including, but not limited to, those defenses based on insufficiency of process, insufficiency of service, and lack of personal jurisdiction, and the filing of this Notice of Removal is subject to, and without waiver of, any such defenses. “A party who removes an action from a state to a federal court does not thereby waive any of his or

her Federal Rule 12(b) defenses or objections.” See § 1395 Waiver of Certain Defenses—Removed Actions, 5C Fed. Prac. & Proc. Civ. § 1395 (3d ed.) (citing cases).

[Remainder of Page Intentionally Left Blank]

WHEREFORE, Defendant Matson Logistics, Inc. respectfully requests that the United States District Court for the Western District of Tennessee assume jurisdiction over this action.

Dated: December 18, 2023

Respectfully submitted,

/s/ Elizabeth G. Hart

THE SWAFFORD LAW FIRM, PLLC
Thomas Anthony Swafford, BPR # 17578
Elizabeth G. Hart, BPR #30070
321 Billingsly Court, Suite 19
Franklin, Tennessee 37067
Telephone: (615) 599-8406
Facsimile: (615) 807-2355
tony@swaffordlawfirm.com
betsy@swaffordlawfirm.com

-and-

**BENESCH, FRIEDLANDER, COPLAN
& ARONOFF LLP**

Eric Larson Zalud, *pro hac vice forthcoming*
127 Public Square
Suite 4900
Cleveland, Ohio 44114
T. 216.363.4500
F. 216.363.4588
Email: ezalud@beneschlaw.com

John C. Gentile, *pro hac vice forthcoming*
1313 North Market Street, Suite 1201
Wilmington, Delaware 19801
Telephone: (302) 442-7010
Facsimile: (302) 442-7012
Email: jgentile@beneschlaw.com

Attorneys for Defendant Matson

CERTIFICATE OF SERVICE

I hereby certify that on December 18, 2023, a copy of the foregoing was filed electronically.

Notice of this filing will be sent to all parties by operation of the Court's electronic filing system.

Parties may access this filing through the Court's system. In addition, the undersigned hereby certifies that a copy of the foregoing is being served upon the following, by regular United States mail, postage prepaid and via electronic mail:

**BAKER, DONELSON, BEARMAN,
CALDWELL, & BERKOWITZ, PC**
R. Spencer Clift, III (TN Bar # 20445)
First Horizon Building
165 Madison Avenue, Suite 2000
Memphis, TN 38103
Email: sclift@bakerdonelson.com

Attorneys for Plaintiff

COHEN & PALOMBO P.C.
Eric Palombo
The Times Building
32 Parking Plaza
Suite 402
Ardmore, PA 19003
Email: EPalombo@freightlaw.net

Attorneys for Co-Defendant AC Logistics, Inc.

/s/ Elizabeth G. Hart
Elizabeth G. Hart